[illegible]

No. 765

[illegible]

In the Supreme Court of the United States

October Term, 1967

NORTH AMERICAN VAN LINES, INC., APPELLANT

v.

UNITED STATES OF AMERICA AND
INTERSTATE COMMERCE COMMISSION

On Appeal from the United States District Court
for the Northern District of Indiana

MOTION TO AFFIRM

EDWIN N. [illegible],
Solicitor General,

DONALD F. [illegible],
Assistant Attorney General,

[illegible],
Attorneys,

Department of Justice,
Washington, D.C. 20530

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 1295

NORTH AMERICAN VAN LINES, INC., APPELLANT

v.

UNITED STATES OF AMERICA AND
INTERSTATE COMMERCE COMMISSION

On Appeal from the United States District Court for the Northern District of Indiana

---

MOTION TO AFFIRM

Pursuant to Rule 16(1)(c) of the Rules of this Court, the United States of America and the Interstate Commerce Commission jointly move that the judgment of the district court be affirmed.

STATEMENT

This is a direct appeal from the decision of a three-judge district court (J.S. 1c-12c; 277 F. Supp. 741) unanimously sustaining the Interstate Commerce Commission's interpretation of appellant's motor car-

rier certificate (J.S. 1b-6b). In pertinent part, the certificate authorizes appellant to engage in the "transportation [of household goods] . . . as a common carrier by motor vehicle . . . between points in Alaska, on the one hand, and, on the other, points in the United States, except Alaska and Hawaii" (J.S. 1a-2a). On appellant's petition for a declaratory order of interpretation, the Commission held that appellant was not authorized to transport household goods between points in Alaska and, that without such authority, appellant could not move such goods between ports and inland points in Alaska before or following their movement by water to or from Seattle or other Pacific Coast ports in the continental United States (J.S. 2b, 5b-6b, 1c).[1]

Household goods have historically moved between Alaska and the continental United States by two basic modes of transportation. In the "highway mode", the goods are transported entirely by motor vehicle, moving over the Alcan Highway and other highways in the United States and Canada. In the "land-sea-land mode", the goods are transported by ocean vessel between Alaskan and continental ports, moving to and from inland cities by motor vehicle at both ends of the ocean journey.

Prior to Alaska's admission to statehood on January 3, 1959, motor carriers operating in Alaska were not subject to the certificate requirements of the In-

---

[1] Appellant holds another certificate which authorizes it to transport household goods between all points in the United States except Alaska and Hawaii (J.S. 1b-2b). That certificate is not involved in this proceeding.

terstate Commerce Act. In 1958, however, all interstate motor operations in Alaska were brought within the Commission's regulatory authority, and carriers were required to obtain certificates of public convenience and necessity from the Commission. "Grandfather" rights were provided, without requiring proof of public convenience and necessity, for those carriers conducting Alaskan operations on and since August 26, 1958 by either the highway mode (49 U.S.C. 306 (a)(4)) or the land-sea-land mode (49 U.S.C. 306 (a)(5)). J.S. 2c-3c; see *Andrews Van Lines, Inc.* v. *United States*, 240 F. Supp. 763 (D. Nebr.), *affirmed per curiam*, 382 U.S. 67.

Appellant applied to the Commission for grandfather rights (1) to operate by the highway mode between points in Alaska, on the one hand, and, on the other, points in the continental United States; and (2) to operate between points in Alaska in connection with shipments moving by the land-sea-land mode. As to the highway mode, the Commission in 1963 found that appellant had "conducted substantial overland operations between points in Alaska and points in the South-48 continuously since prior to the statutory date" and granted a certificate authorizing the continuance of such operations. *Mollerup Van Lines Alaska Grandfather Application*, 95 M.C.C. 338, 343, sustained *sub nom. Andrews Van Lines, Inc.* v. *United States*, *supra*.[2] Authority to engage in opera-

[2] Appellant's application and those of a number of other carriers seeking Alaska grandfather authority were consolidated and decided in a single report with the *Mollerup* application.

tions within Alaska in connection with the land-sea-land mode was denied, however, on the ground that no such operations had been conducted by appellant itself. Rather, the Commission found that the operations between ports and inland points in Alaska upon which appellant relied had actually been conducted by various Alaska-based motor carriers who were themselves entitled to grandfather certificates. *Mollerup, supra*, 95 M.C.C. at 344-345; J.S. 3c-4c.

Appellant subsequently sought to obtain authority, on grounds of public convenience and necessity, to conduct operations within Alaska in connection with land-sea-land service in its own right, instead of operating by agency or interline arrangements with Alaska-based carriers. Denying the application, the Commission found that no public need for the proposed service had been shown, since "existing services, motor-water and all-highway, are meeting all requirements" of the shipping public. *North American Van Lines, Inc., Ext.—Alaska*, No. MC-107012 (Sub-No. 24), decided September 16, 1964 (unreported); J.S. 3b-4b.

The instant proceeding began when appellant in 1966 filed a petition with the Commission requesting a declaratory order that its certificate authorized it to engage in Alaskan operations in connection with the land-sea-land service, or, in the alternative, requesting amendment of its certificate to provide such authority. On October 6, 1966, the Commission, acting without a hearing, entered an order notifying appellant that its certificate does not authorize it to perform such service in Alaska, and that amendment of

appellant's certificate would be warranted only upon a showing of public convenience and necessity. On March 7, 1967, the Commission denied reconsideration.

Appellant brought this action to set aside the Commission's order, asserting that the Commission's interpretation of its certificate was clearly erroneous, and that the order amounted to a revocation of a part of appellant's authority and is void because the Commission did not follow the procedures required by statute for a revocation (49 U.S.C. 312). The three-judge district court unanimously held that "the Commission's interpretation of North American's certificate is entirely reasonable" (J.S. 9c) and that the order did not constitute a revocation (*ibid.*). Accordingly, the court sustained the Commission's order.

ARGUMENT

The three-judge district court unanimously rejected the arguments which appellant advances here. We submit that the decision below sustaining the Commission's order is correct, and that this case presents no issue warranting plenary consideration by this Court.

1. Having granted appellant's grandfather application only with respect to highway service between Alaska and the continental United States, and having twice denied appellant's applications for additional authority to conduct Alaskan operations in connection with land-sea-land service, the Commission properly held that appellant's certificate did not au-

thorize it to perform such operations within Alaska.[3] In our view, the Commission's interpretation of appellant's certificate is demonstrably correct; it certainly cannot be said to be "clearly erroneous" so as to warrant judicial modification. *Nelson, Inc.* v. *United States*, 355 U.S. 554, 558.

The Commission has consistently held that the Alaska segment of land-sea-land service may be performed only by carriers holding authority to operate between points in Alaska; see *United Van Lines, Inc., Ext.—Alaska*, 99 M.C.C. 331, 336-337. As the Commission noted, appellant has no "authority under which it may conduct motor-carrier operations between two points within Alaska" (J.S. 4b). Appellant is thus clearly precluded from treating the ocean segment of the land-sea-land route as a substitute for part of its highway authority and itself performing the required Alaskan motor service on the route, since the transportation of shipments between Alaskan ports and inland Alaska points is beyond the scope of appellant's certificate. Compare *Substituted Service—Piggyback*, 322 I.C.C. 301, 355, sustained *sub nom. American Trucking Associations* v. *Atchison, Topeka & Santa Fe Ry. Co.*, 387 U.S. 397. Thus, the district court properly found the Commission's interpretation of appellant's certificate to be "amply justified and reasonable" (J.S. 10c).

---

[3] The Commission was not required, as appellant suggests (J.S. 20-22), to close its eyes to its prior denial of land-sea-land Alaskan operating authority, even in the absence of patent ambiguity in the certificate. *Nelson, Inc.* v. *United States*, 355 U.S. at 554, 558 n. 3; *Sims Motor Transport Lines* v. *United States*, 183 F. Supp. 113, 117 (N.D. Ill.), *affirmed per curiam*, 362 U.S. 637.

Further, the court below noted that the Commission's interpretation is fully consistent with the Congressional purpose in enacting the Alaska grandfather provisions. Since the Commission had found that appellant had not itself engaged in operations in Alaska in connection with the land-sea-land mode, the Commission's order gives effect "to North American's own practice as the Commission has found it" (J.S. 11c).[4]

2. There is no substance to appellant's assertion that the Commission's interpretation constituted an improper revocation owing to an alleged long-standing acquiescence by the Commission in appellant's performance of land-sea-land operations. To the extent that appellant relies upon Alaskan operations purportedly conducted by it prior to the Commission's determination of its grandfather application in *Mollerup* in 1963, appellant's claims are flatly contradicted by the Commission's finding in *Mollerup* that appellant itself had engaged in no operations within Alaska in connection with land-sea-land service (*supra* at p. 4). And if appellant has in fact conducted Alaskan operations in connection with land-sea-land service since *Mollerup*, it has done so in plain disregard of the Commission's denial in *Mollerup* of appellant's application for such authority.[5]

---

[4] The Commission's order does not interfere with appellant's established practice of utilizing Alaska-based carriers in connection with its land-sea-land service.

[5] The only circumstances subsequent to the *Mollerup* decision upon which appellant relies are an informal opinion of a Commission employee and the acceptance of a tariff by a board of agency employees, neither of which is in any way

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

DONALD F. TURNER,
Assistant Attorney General.

GREGORY B. HOVENDON,
ARTHUR I. CANTOR,
Attorneys.

ROBERT W. GINNANE,
General Counsel,

BETTY JO CHRISTIAN,
Attorney,
Interstate Commerce Commission.

MAY 1968.

---

binding upon the Commission in interpreting the scope of the operating authority conferred by appellant's certificate. *Thompson* v. *Texas Mexican R. Co.*, 328 U.S. 134, 146.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1968 298562 746